

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. 4:15CR 404 HEA/NAB
)
DERRICK TERRY,)
)
Defendant.)

MOTION BY SPECIAL COUNSEL TO LIMIT CONTACT/VISITATION
WITH DEFENDANT

Comes now Paul J. D'Agrosa, on behalf of Defendant Derrick Terry and hereby requests this Court enter an order directing the U.S. Marshal and any other law enforcement agency responsible for housing Defendant Derrick Terry, to limit visitation with Defendant to only those counsel currently deemed conflict-free. In support thereof, undersigned counsel states as follows:

1. The government previously filed an ex parte motion for inquiry, which was sealed by the Court. A supplemental motion was also filed.
2. As a result of the government's motion, undersigned counsel was appointed to represent Defendant Derrick Terry for the limited purpose of discerning whether or not a conflict exists with retained counsel Mr. Beau Brindley [doc. 629].
3. Prior to counsel's limited appointment, CJA counsel Michael Fagras was appointed to represent Defendant and has been acting in that capacity.
4. A hearing on the conflict issue has not occurred and is currently scheduled for December 2, 2016. At said hearing, it is anticipated that all parties will be heard with

regard to the conflict of interest, including undersigned counsel.

5. In the meantime, it has come to counsel's attention that retained counsel Mr. Beau Brindley (the subject of the Court's inquiry as to a potential conflict of interest), intends to visit Defendant Derrick Terry.

6. It is the position of special counsel that this Court enter an order prohibiting such a visit, thereby limiting Mr. Brindley's contact (and that of any of his associates) with Defendant, until this Court has heard evidence and made a ruling on the conflict issue.

7. Defendant is not being deprived of his right to counsel as he is being effectively and actively represented by Mr. Fagras and by undersigned counsel, in his limited capacity. The Defendant will therefore not be prejudiced should this Court limit visitation and prohibit Mr. Brindley from a face-to-face visit.

8. Counsel submits that in so limiting Defendant's visitation, the Court can maintain the status quo until a hearing is held in December.

9. In the event the Court finds that the instant circumstances do create a serious potential for conflict of interest, it must hear from the Defendant.

The District Court must recognize a presumption in favor of petitioner's counsel of choice, but that presumption may be overcome not only by a demonstration of actual conflict but by a showing of a serious potential for conflict. The evaluation of the facts and circumstances of each case under this standard must be left primarily to the informed judgment of the trial court.

Wheat v. United States, 486 U.S. 153, 164, 108 S. Ct. 1692, 1700 (1988).

“A defendant's right to counsel under the Sixth Amendment includes the right to be represented by an attorney who is free from conflicts of interest. *United States v. Kliti*, 156 F.3d 150, 153 (2nd Cir. 1998), citing *Wood v. Georgia*, 450 U.S. 261, 271 (1981).

10. Counsel submits that in order to preserve Defendant's right to an attorney free from conflict, until a hearing is held with regard to said potential conflict in December, this Court should order that Mr. Brindley be prohibited from visiting Defendant until those crucial findings are made by this Court.

WHEREFORE, for the foregoing reasons, limited special counsel Paul J. D'Agrosa, on behalf of Defendant Derrick Terry does hereby request this Court enter an order directing the U.S. Marshal and any other law enforcement agency, that Defendant's visitation be limited to current conflict-free counsel, thereby excluding Mr. Beau Brindley and/or any associates of Mr. Brindley.

Respectfully submitted,

LAW OFFICES OF
WOLFF & D'AGROSA

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of November, 2016 the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following: All attorneys of record.

/s/ Paul J. D'Agrosa
Paul J. D'Agrosa (#36966MO)